Public Prosecutor v Baddeley Tie Yew Song & Anor and other cases

HIGH COURT (MIRI) — CRIMINAL CASE NOS MYY-45D–1/10 OF 2012, MYY-45D–2/10 OF 2012 AND MYY-45D–3/10 OF 2012
STEPHEN CHUNG JC
24 SEPTEMBER 2013

Criminal Law — Dangerous drugs — Trafficking — Possession — Three accused persons caught in a house where drugs were kept — Other tenants in house aside from three accused persons — Whether there were evidence that drugs belonged to accused persons — Whether accused persons had control and custody of drugs — Whether prosecution case proven beyond reasonable doubt — Whether prima facie case proven — Dangerous Drugs Act 1952

The three accused persons in this case were charged with three criminal charges for offences relating to drug trafficking under the Dangerous Drugs Act 1952 ('DDA'). The facts showed that an operation was carried out by the police in a motor vehicle around Miri. PW4 saw a male person ('the first accused') throwing rubbish in front of the gate of a house and when the former introduced himself as a police officer, the latter ran into the house while shouting 'red alert, red alert'. PW4 and two other policemen chased after the first accused into the house and found two other persons, namely, one male ('the second accused') and one female ('the third accused'). A search inside the room of the house revealed transparent plastic red strips containing crystal lumps suspected to be *syabu*. When asked whether there were other drugs in the house, the third accused told PW4 that there were some kept in the refrigerator. Further search revealed a quantity of drugs in the kitchen cabinet, a bunch of keys, a white bag and a glass bottle with a tube. The issue that arose for the court's determination was whether the three accused persons were in possession of the drugs found. In their defence, the three accused persons brought forth evidence that there were a Vietnamese woman and another male person ('Chan') residing in the house together with them. It was then submitted that the accused persons did not have exclusive possession, custody or control of the house. It was further submitted that the drugs which were seized did not belong to them. The defence argued that the three accused persons, in particular, the third accused, did not rent the house as it was rented by Chan. The Vietnamese woman was alleged to be Chan's mistress and Chan would sometimes stay in the house. The line of defence was that the drugs belonged to Chan and the Vietnamese woman.

Held, acquitting and discharging the three accused persons:

(1) The prosecution did not explain these discrepancies or contradictions on

the searches and discoveries of the drugs in the house. There were serious doubts on the searches, discoveries and seizures of the drugs by the police party in the house and whether the drugs belonged to the three accused persons. These material discrepancies raised serious questions on the truth and accuracy of PW4's testimony and on his credibility in the trial (see para 40).

(2) The plastic packets containing drugs were the subject matter of the second charge against the second and third accused persons only. The first accused was not charged as such. Since the prosecution had decided not to charge the first accused in respect of this charge under s 12(2) of the DDA, this established that he was not in possession, custody or control of the drugs and that he probably did not know that there were drugs in the room (see para 41).

(3) There was no evidence and explanation adduced by any prosecution witness as to when or what time did the first and second accused had gone to the house, whether they went together or separately, whether it was shortly before the arrival of the police party at the house or how long had they been in the house. There was no evidence that they were there to consume or to buy drugs. The inference could be drawn that they did not have custody and control of the drugs found in the refrigerator and in the kitchen cabinet in the house and that they did not know and were not conscious of the nature of the drugs found. There was also no evidence that they had been to the kitchen or had opened or had access to the refrigerator and or the kitchen cabinet. The benefits of any doubts and the benefits of the contradictions in the testimony of PW4 on the discoveries and seizures of the drugs should be given to them. The conclusion was that they were not in possession of the drugs found in the house (see para 47).

(4) There was no evidence; direct and circumstantial that there was any common intention between the three accused persons to be in possession or to be trafficking in dangerous drugs which were found and seized by PW4 in the house. There was no evidence of any plan or meeting of minds of all three accused persons to commit the offences for which they were charged with. There was no evidence that it was pre-arranged or that it was on the spur of the moment between them to be in possession or to be trafficking in dangerous drugs in the house (see para 52).

(5) The evidence showed that there inconsistencies or contradictions in the identity, descriptions and weights of the drugs found and seized. Since there were numerous discrepancies, the inference was that the drugs which were seized by PW4 and sent for analysis and produced in the court were different drugs. The inference could also be drawn that the drugs had been tampered with because they were different in colours, descriptions and weights (see para 53).

(6) There was no direct or circumstantial evidence that the three accused persons were trafficking in dangerous drugs. They were merely found in the room in the house when the police arrived. The prosecution was relying on the presumption under s 37(da) of the DDA but the presumption under the provision did not apply. The material discrepancies have raised serious doubts on the prosecution case which were not explained by the prosecution. Therefore, the prosecution failed to make out a prima facie case against the three accused persons (see paras 79–80).

[Bahasa Malaysia summary

Ketiga-tiga tertuduh dalam kes ini dituduh dengan tiga pertuduhan jenayah bagi kesalahan-kesalahan berkenaan pengedaran dadah di bawah Akta Dadah Berbahaya 1952 ('ADB'). Fakta menunjukkan bahawa satu operasi telah dijalankan oleh pihak polis dalam sebuah motokar sekitar Miri. PW4 mendapati seorang lelaki ('tertuduh pertama') membuang sampah di hadapan pagar sebuah rumah dan apabila dia memperkenalkan dirinya sebagai pegawai polis, tertuduh pertama melarikan diri masuk ke rumah sambil berteriak 'red alert, red alert'. PW4 dan dua orang lagi pegawai polis mengejar tertuduh pertama ke dalam rumah dan menjumpai dua orang lagi, iaitu, seorang lelaki ('tertuduh kedua') dan seorang lagi perempuan ('tertuduh ketiga'). Satu carian di dalam bilik di dalam rumah tersebut mendedahkan satu cebisan plastik merah mengandungi ketulan kristal yang disyaki syabu. Apabila ditanya sama ada terdapat dadah lain dalam rumah tersebut, tertuduh ketiga memberitahu PW4 bahawa terdapat sedikit yang disimpan dalam peti sejuk. Carian lanjut mendedahkan sejumlah dadah dalam kabinet dapur, sejambak kunci, satu beg plastik dan satu botol gelas dengan tiub. Isu yang timbul untuk diputuskan oleh mahkamah adalah sama ada ketiga-tiga tertuduh mempunyai milikan terhadap dadah yang dijumpai. Dalam pembelaan mereka, ketiga-tiga tertuduh mengemukakan keterangan bahawa terdapat seorang wanita Vietnam dan seorang lelaki ('Chan') yang menetap di rumah tersebut dengan mereka. Seterusnya dihujahkan bahawa tertuduh-tertuduh tidak mempunyai milikan, jagaan dan kawalan ke atas rumah tersebut. Selanjutnya dihujahkan lagi bahawa dadah yang dirampas bukanlah milik mereka. Pihak pembelaan menghujahkan bahawa ketiga-tiga tertuduh, khasnya, tertuduh ketiga, tidak menyewa rumah tersebut kerana ia disewa oleh Chan. Wanita Vietnam tersebut dikatakan wanita simpanan Chan dan Chan sering tinggal di rumah tersebut. Asas pembelaan adalah bahawa dadah tersebut milik Chan dan wanita Vietnam tersebut.

Diputuskan, membebaskan dan melepaskan ketiga-tiga tertuduh:

(1) Pihak pendakwaan tidak menjelaskan percanggahan-percanggahan dalam carian dan dadah yang dijumpai di dalam rumah. Terdapat keraguan serius mengenai carian-carian, penemuan-penemuan dan

rampasan dadah di dalam rumah dan sama ada dadah tersebut milik ketiga-tiga perayu. Percanggahan material ini membangkitkan persoalan-persoalan serius mengenai kebenaran dan ketepatan testimoni PW4 dan kredibilitinya dalam perbicaraan (lihat perenggan 40).

(2) Paket-paket plastik yang mengandungi dadah merupakan perkara pertuduhan kedua terhadap tertuduh kedua dan ketiga. Tertuduh pertama tidak dituduh seperti sedemikian. Oleh kerana pihak pendakwaan tidak memutuskan untuk menuduh tertuduh pertama berkenaan dengan pertuduhan di bawah s 12(2) ADB, ini membuktikan bahawa dia tidak mempunyai milikan, jagaan dan kawalan ke atas dadah tersebut dan bahawa dia mungkin tidak mengetahui terdapatnya dadah dalam bilik tersebut (lihat perenggan 41).

(3) Tiada keterangan dan penjelasan yang dikemukakan oleh saksi pendakwaan mengenai bila atau masa tertuduh pertama dan kedua telah memasuki rumah tersebut, sama ada mereka masuk bersama atau berasingan, sama ada ia sejurus sebelum ketibaan pihak polis di rumah tersebut atau berapa lama mereka di dalam rumah tersebut. Tiada bukti bahawa mereka berada di situ untuk mengambil atau membeli dadah tersebut. Inferens yang boleh dibuat adalah bahawa mereka tidak mempunyai jagaan dan kawalan ke atas dadah yang dijumpai di dalam peti sejuk dan di dalam kabinet dapur dan bahawa mereka tidak tahu dan sedar akan sifat dadah yang dijumpai. Tiada juga bukti bahawa mereka telah ke dapur atau membuka atau mempunyai akses kepada peti sejuk atau kabinet dapur. Faedah sebarang kesangsian dan faedah percanggahan dalam testimoni PW4 mengenai penemuan dan rampasan dadah seharusnya diberikan. Kesimpulannya adalah bahawa mereka tidak mempunyai milikan terhadap dadah yang dijumpai di dalam rumah tersebut (lihat perenggan 47).

(4) Tiada keterangan; baik langsung mahupun ikut keadaan bahawa terdapat niat bersama antara ketiga-tiga yang bahawa mereka mempunyai milikan mahupun mengedar dadah berbahaya yang dijumpai atau dirampas PW4 dalam rumah. Tiada keterangan mengenai sebarang perancangan atau pertemuan minda antara ketiga-tiga tertuduh untuk melakukan kesalahan yang dituduh ke atas mereka. Tiada keterangan bahawa ia telah diatur atau bahawa mereka tiba-tiba terangsang untuk memiliki atau mengedar dadah berbahaya tersebut di dalam rumah (lihat perenggan 52).

(5) Keterangan menunjukkan bahawa terdapat percanggahan-percanggahan dalam identiti, butiran dan berat dadah yang dijumpai dan dirampas. Oleh kerana terdapat beberapa percanggahan, inferens adalah bahawa dadah tersebut yang telah dirampas oleh PW4 dan dihantar bagi analisa dan yang dikemukakan di mahkamah adalah dadah yang berbeza.

Inferens yang boleh dibuat juga adalah bahawa dadah tersebut telah diusik kerana kesemuanya berbeza dari segi warna, penerangan dan berat (lihat perenggan 53).

(6) Tiada keterangan langsung mahupun ikut keadaan bahawa ketiga-tiga tertuduh mengedar dadah berbahaya. Mereka sekadar dijumpai dalam bilik di dalam rumah tersebut ketika polis tiba. Pihak pendakwaan bersandarkan pada anggapan di bawah s 37(da) ADB bahawa anggapan di bawah peruntukan tidak terpakai. Percanggahan-percanggahan material telah membangkitkan keraguan serius ke atas kes pendakwaan yang mana tidak dijelaskan oleh pihak pendakwaan. Oleh itu, pihak pendakwaan gagal membuktikan kes prima facie terhadap ketiga-tiga tertuduh (lihat perenggan 79–80).]

Notes

For cases on trafficking, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 205–300.

Cases referred to

Azizan bin Yahaya v PP [2013] 1 MLJ 180; [2012] 8 CLJ 405, CA (refd)
Bahram Nikkhouyabgram Nayeb v PP [2013] 6 CLJ 702, CA (refd)
Chan Pean Leon v PP [1956] 1 MLJ 237; [1956] 1 LNS 17 (refd)
Gunalan a/l Ramachandran & Ors v PP [2004] 4 MLJ 489; [2004] 4 CLJ 551, CA (refd)
Hasbala Mohd Sarong v PP [2013] 6 MLJ 636; [2013] 6 CLJ 945, FC (distd)
Krishna Rao a/l Gurumuthi v PP and another appeal [2009] 3 MLJ 643; [2009] 2 CLJ 603, FC (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65; [2003] 1 CLJ 734, CA (refd)
Magendran a/l Mohan v PP [2011] 6 MLJ 1 ; [2011] 1 CLJ 805, FC (refd)
PP v Abdul Rahman bin Akif [2007] 5 MLJ 1; [2007] 4 CLJ 337, FC (refd)
PP v Lam San [1991] 3 MLJ 426; [1991] 3 CLJ 2410, SC (refd)
Parlan bin Dadeh v PP [2008] 6 MLJ 19; [2009] 1 CLJ 717, FC (refd)
Tan Yew Choy v PP [2010] 5 MLJ 212, FC (refd)
Toh Ah Loh and Mak Thim v Rex [1949] 1 MLJ 54 (refd)
Yeong Kia Heng lwn Pendakwa Raya [1992] 1 MLJ 327, SC (refd)
Zaifull bin Muhammad v PP and another appeal [2013] 2 MLJ 348, FC (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 9(1)(b), 12(2), 37(d), (da), 39B(1)(a), First Schedule, Part III
Evidence Act 1950 ss 8, 9, 27

Mahadhir Mohd Khairuddin (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.
Ranbir Singh Sangha (Arthur Lee with him) (Ranbir Singh & Co and Arthur CH Lee & Co) for the accused persons.

Stephen Chung JC:

[1] There are three criminal cases, with eight charges, against the three accused persons. By consent of parties, the eight charges were set down for joint trial before the court.

[2] In Criminal Case No MYY–45D–1/10 of 2012, Baddeley Tie Yew Siong ('the first accused'), Kenny Gabriel Anthony ('the second accused') and Emily Yong Lu Tink ('the third accused') were charged as follows:

First Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati mengedar dadah berbahaya iaitu Cannabis seberat 3967.84 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 39B(2) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

Second Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati dalam milikan kamu dadah berbahaya iaitu 3,4-Methylenedioxymethamphetamine (MDMA) seberat 27.14 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 12(2) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 39A(1) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

Third Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati dalam milikan kamu dadah berbahaya iaitu Methamphetamine seberat 3.49 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 12(2) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 12(3) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

[3] In Criminal Case No MYY–45D–2/10 of 2012, the first, second and third accused persons were charged as follows:

First Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati dalam milikan kamu dadah berbahaya

iaitu Prepared Opium seberat 87.74 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 9(1)(b) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 9(2) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

Second Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati dalam milikan kamu dadah berbahaya iaitu Nimetazepam seberat 2.20 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 12(2) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 12(3) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

Third Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati dalam milikan kamu dadah berbahaya iaitu Ketamine seberat 56.44 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 12(2) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 12(3) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

[4] In Criminal Case No MYY–45D–3/10 of 2012, the first, second and third accused persons were charged as follows:

First Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati mengedar dadah berbahaya iaitu Cannabis seberat 891 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 39B(2) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

In respect of this second charge, only the second and third accused persons were charged as follows:

Second Charge:

Bahawa kamu pada 23.2.2012 jam lebih kurang 3.40 pagi bertempat di Lot 793, Jalan Acacia 3A, Shang Garden, Miri, di dalam daerah Miri, dalam negeri Sarawak dengan niat bersama kamu telah didapati dalam milikan kamu dadah berbahaya iaitu Methamphetamine seberat 1.70 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 12(2) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah Seksyen 12(3) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

[5] On 25 February 2013, the learned deputy public prosecutor ('DPP') applied to amend the eight charges by adding the words 'bersama-sama' after the words 'bahawa kamu' and before 'pada 23.02.2012' to each of the eight above charges. Learned counsel did not object to the amendment to each of the eight charges and which were read and explained to each of the three accused persons. Each of the three accused persons pleaded not guilty to each of the eight amended charges.

[6] In the first amended charge in MYY–45D–1/10 of 2012, the three accused were charged for trafficking in a dangerous drug ie 3967.84g of cannabis under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). In the first amended charge in MYY–45D–3/10 of 2012, the three accused were also charged for trafficking in a dangerous drug ie 891g of cannabis under s 39B(1)(a) of the DDA. In the first amended charge in MYY–45D–2/10 of 2012, the three accused were charged to have in their possession 87.74g of prepared opium under s 9(1)(b) of the DDA. In the other five amended charges, the three accused persons were charged to have in their possession various dangerous drugs described therein under s 12(2) of the DDA except that the first accused was not charged under the second charge in MYY–45D–3/10 of 2012.

[7] In his opening speech, the learned DPP informed the court that the prosecution relied on direct evidence to prove possession of the various drugs for which the three accused were charged with and the prosecution is not relying on the presumption of possession under s 37(d) of the DDA. The learned DPP informed the court that to prove the element of trafficking, the prosecution relied on the presumption under s 37(da) of the DDA.

[8] The duty of a judge sitting alone, at the close of the case for the prosecution, is to determine as a trier of fact whether the prosecution has made out a prima facie case against the accused persons. He must subject the evidence of the prosecution to a maximum evaluation: *Looi Kow Chai & Anor v PP* [2003] 2 MLJ 65; [2003] 1 CLJ 734.

[9] The facts showed that PW4, together with Kpl Sukhamin ('PW8'), L/Kpl Shahrin and L/Kpl Abdullah Hisham from the narcotic section of Miri Police, was instructed by his superior officer ('PW9') to carry out a 'response team' operation to go on patrol in a motor vehicle around Miri. On 23 February 2012 at about 3.40am, the police party was on patrol at Shang Garden. PW4 saw a male person throwing rubbish in front of the gate of a house at Lot 793, Jalan Acacia 3A, Shang Garden, Miri. He introduced himself as a police officer to this male person. PW4 testified that this male person ran into the house and shouted 'red alert, red alert'. PW4, PW8 and another policeman chased after this male person into the house, to a room on the

ground floor of the house. Inside this room, there were another male person and a female person. The police made a search inside the room and found three transparent plastic red strips containing compressed crystal lumps suspected to be *syabu*.

[10] PW4 then asked the three persons whether there were any other drugs in the house. PW4 testified that the female person told him that there was drug kept in the refrigerator in the kitchen in the house. PW4 made a search in the refrigerator and found some drugs in the refrigerator. PW4 testified that he instructed L/Kpl Abdullah Hisham to make a search in the cabinet in the kitchen who found a quantity of drugs in the cabinet. PW4 seized the drug found in the ground floor room of the house and the drugs found in the refrigerator and in the cabinet in the kitchen of the house. PW4 also seized the refrigerator (exh P32), a bunch of keys (exh P35), a white bag (exh P34) and a glass bottle with a tube (exh P33).

[11] PW4 arrested the three persons, brought them together with the drugs to Miri Central Police Station ('CPS') and informed PW9, who became the Investigation Officer ('IO') of the case, of the arrests and seizures. After PW9 arrived at CPS, PW4 weighed and labeled the drugs and exhs in the presence of PW9 and the three accused. PW4 prepared a handover document (exh P36) and then handed over the exhs to PW9. PW4 also prepared a search/seizure list signed by the three accused persons (exh P37). PW4 then lodged a police report on the arrests and seizures. This report was tendered as exh P31.

[12] PW9 sent the suspected drugs, which were seized from the house, to the Chemistry Department in Bintulu for analysis. The drugs were received and analysed by a government chemist (PW2) who prepared a report (exh P10) on the analysis of the drugs (see also exh P9).

[13] PW4 testified and identified the male person who was seen throwing the rubbish outside the house as the first accused and the other male person in the room on the ground floor of the house as the second accused. He identified the female in the same room as the third accused. PW4 also identified the three persons in the house whom he had arrested as the first, second and third accused persons respectively sitting in the dock in the court during the trial.

[14] The issue in this trial is whether the three accused persons were in possession of the drugs found and seized by PW4. Possession is also an important ingredient of trafficking in dangerous drugs with which they were charged. The first step is whether at the material time the drugs were in the custody and control of the accused persons. However, mere custody and control is not sufficient to establish possession for the purposes of the Act. The prosecution has to establish knowledge of the drugs by the accused: see *Chan*

Pean Leon v Public Prosecutor [1956] 1 MLJ 237; [1956] 1 LNS 17, *Bahram Nikkhouyabgram Nayeb v Public Prosecutor* [2013] 6 CLJ 702.

[15] What constitutes 'possession' is a question of law. It is however a question of fact whether in a given case a person can be said to be in possession of something: *Public Prosecutor v Abdul Rahman bin Akif* [2007] 5 MLJ 1; [2007] 4 CLJ 337. Possession, in order to incriminate a person, must have the following characteristics. The possessor must know the nature of the thing possessed, must have in him a power of disposal over the thing, and lastly must be conscious of his possession of the thing. If these factors are absent, his possession can raise no presumption of mens rea, without which (except by statute) possession cannot be criminal: *Toh Ah Loh and Mak Thim v Rex* [1949] 1 MLJ 54.

[16] Referring to the evidence, the notes of proceedings ('NOP') on 1 March 2012 at 2.57pm (exh D10A) showed that the three accused persons were tentatively charged, with no plea taken in the magistrates court, Miri. The NOP showed that learned counsel informed the court and the investigation officer/prosecuting officer to investigate why a Vietnamese woman by the name of Ngu Yen Thi Anh Duong, with Vietnam passport no B4497182, who was residing at the house and who was present during the police raid in the house, was released from the house without any particular or statement recorded from her. It was raised that this Vietnamese woman arrived via Miri Airport on 10 February 2012 and left via Miri airport on 26 February 2012. Learned counsel also put on record that a male person by the name of Chan Siew Vun had on occasions stayed in the house with the Vietnamese woman.

[17] Therefore learned defence counsel for the three accused persons submitted that they did not have exclusive possession, custody or control of the house since Chan Siew Vun and the Vietnamese woman resided in the house at all material times. It was submitted that the drugs which were seized did not belong to the three accused and were not in their possession. The defence submitted that the three accused, in particular the third accused, did not rent the house. It was put to PW4 and PW9 that the house was not rented by the third accused but that it was rented by Chan Siew Vun, who was her boss. It was put to PW4 and PW9 that this Chan Siew Vun sometimes stayed in the house with the Vietnamese woman who was his mistress and the drugs belonged to them.

[18] It was put to PW4 and PW9 that the Vietnamese woman was staying in the house at the material time. It was put to PW4 and PW9 that when PW4 arrested the three accused persons and seized the drugs, the Vietnamese woman, her passport, her clothes and things were found in the house and that PW4 had asked her to leave the house after the police made a deal with Chan

Siew Vun and the Vietnamese woman. The defence counsels showed a photograph of the Vietnamese woman (exh D3) to PW4 and PW9. PW4 and PW9 denied the allegations and said that they had never seen the Vietnamese woman.

[19] The learned DPP submitted that when the police party approached the first accused, he ran into the house and shouted 'red alert'. It was submitted PW4 had said that when the police entered the room on the ground floor of the house, the second and third accused appeared to be in shock, afraid, looked pale and stuttered when spoken to by PW4. It was submitted that the reactions of the three accused persons showed that they knew about the drugs inside the house, that they were the only three persons in the house at that time and that they had the power of disposal and the power to deal with the drugs. It was submitted that the drugs found in the house were in the possession of the three accused. The prosecution cited ss 8 and 9 of the Evidence Act 1950 and the case of *Parlan bin Dadeh v Public Prosecutor* [2008] 6 MLJ 19; [2009] 1 CLJ 717 in support of its submissions.

[20] The evidence showed that PW1 was the owner of the house. When he bought the house in 2010, it was already rented to a tenant by the vendor. After a few months, this tenant went back to India. PW1 testified that after the tenant had vacated the house, he did some renovations to the house, cleared the things in the house, cleaned it and advertised it for rent. PW1 testified that in January, 2012, he received a call from a lady intending to rent the house and they arranged to meet at the house on the night of 29 January 2012. He went there with his wife and daughter. This lady went to the house with two other ladies. They viewed the house and he had the impression that they would rent the house.

[21] PW1 said that this lady agreed to rent the house for RM1,000 per month. He agreed to let them stay in the house that night provided she paid a deposit of RM3,000 on that night and that the tenancy agreement could be prepared and signed later. After PW1 and the ladies left the house, the lady phoned PW1 that they were ready to pay the deposit that night and they agreed to meet at the house again. After they met at the house again, PW1 gave the keys to the house to this lady after she paid the RM3,000 deposit. He remembered he was told that her boss would come to the house in a few days' time. When he gave the keys to her, the other two ladies were inside a car and he could not recognise them. He said that was the only set of keys to the house that he had and he did not have any spare keys to the house.

[22] PW1 said that he could not remember the name of this lady. A few days later, he sent a sms message to this lady to ask for her name and IC number to prepare the tenancy agreement. He was given a name 'Chan Siew Vun' and an

IC number. He told her he needed to sight her IC for the agreement to be prepared. PW1 assumed 'Chan Siew Vun' was her name which turned out to be incorrect. PW1 identified this lady as the third accused.

[23] During police investigation, PW1 told PW9 that the third accused had given to him the name of Chan Siew Vun and his IC number. As part of his investigation PW9 found that Chan Siew Vun was not a fictitious person. He had checked the name and IC with the National Registration Department, Miri. He found the last address of Chan Siew Vun and he instructed his police personnel to go to that address twice but the house was empty. PW9 said the police could not locate Chan Siew Vun or his family at the house. PW9 testified that he put a notice with Chan Siew Vun's name, IC and photograph in several newspapers in Sarawak requesting for information from the public on the whereabouts of Chan Siew Vun but it was not successful (see exhs P42, P43, D6, D6A, D7, D7A, D8, D8A). Until now the police could not find Chan Siew Vun to interview him to assist the police in the investigation.

[24] Besides what the third accused had said to PW1 that Chan Siew Vun was the person who would rent the house and had given the name and IC of Chan Siew Vun to PW1, there was no evidence that it was Chan Siew Vun who had actually rented the house or had stayed in the house. PW1 said he had the impression the three ladies who had inspected the house on that night would stay in the house. After the third accused gave the name and IC of Chan Siew Vun to PW1, PW1 did not get to see the original IC of Chan Siew Vun or the IC of the third accused or the IC of the other two ladies who were with the third accused when they inspected the house on the night of 29 January 2012 because before he could do so, the three accused persons had been arrested on 23 February 2012.

[25] The evidence showed that when the police went to the house, the three accused were the only persons in the house. Chan Siew Vun was not in the house at that time. The Vietnamese woman was not in the house at that time although it was put to PW4 and PW9 that she was present at that time and was asked to leave the house by PW4 and PW9.

[26] Learned counsel referred to a letter from the Immigration Department, marked for identification only as ID 11 because the maker of that letter was yet to be called to tender the letter, and submitted that the letter showed that the Vietnamese woman had left Miri on 26 February 2012 and that she was not a fictitious person. PW9 did not investigate this Vietnamese woman. Although this Vietnamese woman was in Miri, based on ID 11 which was yet admissible in evidence, she might or might not be the mistress of Chan Siew Vun and there was no evidence that at the material times she stayed or was in the house.

[27] PW4 was asked and he testified that he did not find the photograph of this Vietnamese woman (exh D3) in the house. He was shown D3 and he said he had never seen the lady in the photograph. He said he did not see any Vietnamese woman in the house at the time the police party was in the house. It was put to PW9 that one of the two ladies, who inspected the house together with the third accused, found D3 in the house. However this was not put to PW4 when he was cross-examined by the counsel. PW9 also testified that he had never seen the lady in the photograph. The two ladies had not given evidence that they had found the photograph in the house. They had not testified whether it was found when they inspected the house on the night of 29 January 2012 or subsequent to that. As the evidence stood at the end of the prosecution's case, there was no evidence that the Vietnamese woman and or Chan Siew Vun were in the house at the material time.

[28] Although the defence had alleged that PW4, PW9 and the police party had made a deal with Chan Siew Vun and the Vietnamese woman to release the Vietnamese woman, to take her things and leave the house, there was no evidence as such. If the allegations were true, they were very serious allegations of police corruption and in particular against PW4, PW9 and the police personnel who were in the house. PW4, PW9 and the other witnesses who were present and were called to testify in the trial had denied the allegations.

[29] The NOP (exh D9A) of the remand proceedings on 23 February 2012, on the same day after they were arrested, showed that the third accused did not on that date put on record or raised the presence of the Vietnamese woman and Chan Siew Vun in the house or that the Vietnamese woman was released by PW4 on that day. The NOP showed that on that day the third accused only requested for a shorter period of remand because she had just finished her studies, had come back from Brunei and looking for a job. Since she was still looking for a job, she was unlikely to be working for Chan Siew Vun and he was probably not her boss.

[30] After a week, on 1 March 2012, the three accused did not lodge any police report against PW4, PW9 or against the other police personnel on the deal or the corruption or as alleged against them although this was raised on that day. They did not lodge any report on the discovery of the photograph D3, or the presence of the Vietnamese woman and her release by the police, or on the discovery of the passport or the clothes, gloves and other things belonging to the Vietnamese woman in the house. They also did not lodge any police report that the house was rented by Chan Siew Vun and that Chan Siew Vun was her boss who stayed in the house with the Vietnamese woman.

[31] The evidence showed that when the police approached the house, the first accused was then throwing rubbish outside the house. When PW4

identified himself to the first accused, the first accused ran into the house and shouted 'red alert, red alert'. The first accused ran into the room where the second and third accused persons were found. The evidence showed that when the police entered the house, the second and third accused were in the room on the ground floor of the house. The evidence showed that the three accused were the only persons in the room and in the house at that time.

[32] Learned defence counsels submitted that the police personnel were not in police uniform. When the police party approached the first accused, he did not know whether they were police or unknown persons and he thought they would rob him and the others in the house. So he ran into the house to alert the others in the house. It was submitted that when the first accused shouted 'red alert', it did not establish that the three accused knew there were drugs in the house.

[33] Notwithstanding what PW4 had testified, there were material discrepancies in his testimony. At p 181 of the NOP, PW4 testified that he made a search inside the room and he found three transparent plastic red strips containing compress lumps crystal suspected to be *syabu* (exhs P12A–C). That was the extent of his testimony in respect of the search and discovery of these exhs in the room. He did not testify how and where he made the search and where he found the drug in the room. He did not testify whether the exhibits were hidden and if so, where inside the room. He did not testify whether the exhibits were placed together or separately and if so, where inside the room. He did not testify whether the exhibits were on the low table or on the floor or inside the mattress or pillow or under the mat which were shown in the photographs (exhs P8I and J). Exhibits P12 A–C were not shown or seen in the photographs P8I and J. There was no evidence adduced whether the three accused were aware or knew of these exhs P12 A–C and whether they knew that it was dangerous and or prohibited drug.

[34] However, PW4 in his police report (exh P31) stated that L/Kpl Shahrin found the three packets of drug on the floor in the room. This contradicted his own testimony at p 181 of the NOP that he had made a search inside the room and found the exhs P12 A–C. L/Kpl Shahrin was not called as a witness and he did not testify that he had found the three packets of drug on the floor in the room. No explanation was given on this material discrepancy whether it was PW4 or L/Kpl Shahrin who found P12 A–C in the room. These raised some doubts on the truth or accuracy of PW4's testimony and on the discovery and seizure of these exhibits.

[35] PW4 went on to testify that the second and third accused were then burning the drug and then they sucked the smoke using an instrument (p 188 of NOP). At p 192 of NOP he again said that the second and third accused

were found taking *syabu* in the room. PW4 then said that they used the glass bottle with the tube (exh P33) to take the drug (see p 197 NOP). In his cross-examination, PW4 said that when the police party entered the room, the third accused was holding and using exh P33 to smoke the drug but he was not sure whether the second accused was holding anything in his hands (see p 247 NOP). His testimony, if true, would incriminate the second and third accused that they were at that time consuming and in possession of the drug.

[36] Subsequently, during cross-examination, PW4 contradicted himself. PW4 said that the tube in the glass bottle ('P33') was not in the third accused's mouth (p 248 of the NOP) and he said that he did not actually see either the second or the third accused were in the act of smoking drug from P33 (p 249 of NOP). PW4 also said that their urine specimen were taken and sent for testing. The prosecution did not produce any such test results. PW4 did not explain these discrepancies. These again raised questions on the truth and accuracy of his testimony and on his credibility in the trial.

[37] Further, PW4 had testified that he instructed L/Kpl Abdullah Hisham to make a search inside the cabinet in the kitchen and L/Kpl Abdullah Hisham found several containers and packets suspected to contain drugs (see pp 181–182 of NOP). At p 186 of NOP, PW4 said that he seized all the drugs found by L/Kpl Abdullah Hisham. However, PW4 then testified that he had asked L/Kpl Abdullah Hisham to stand on guard at the front of the house and that he together with Kpl Sukhamin (PW8) and L/Kpl Shahrin had chased after the first accused to the room on the ground floor of the house (see p 188 of the NOP).

[38] Since L/Kpl Abdullah Hisham was asked to stand on guard at the front of the house, he did not enter the house. He was not in the kitchen and did not make any search inside the cabinet in the kitchen. He could not have found the drugs in the cabinet in the kitchen. PW4 did not explain these material discrepancies or inconsistencies in his testimony and in his police report P31.

[39] L/Kpl Abdullah Hisham, who was alleged to have made the search and found the drugs, was not called to testify that he had made the search and found the drugs in the cabinet in the kitchen. He was not asked to describe or to identify the drugs that he was supposed to have found in the cabinet in the kitchen. If he had made the search and found the drugs, what he had said to PW4 on the search and discovery of the drugs would be hearsay. His testimony was crucial to the prosecution case because so many of the drugs were supposed to have been found by him. He would be the best person to testify as such. PW8 was present in the house but he did not testify nor explain whether it was PW4 or L/Kpl Abdullah Hisham who had made the search and found the drugs in the cabinet in the kitchen.

[40] These material discrepancies raised serious questions on the truth and accuracy of PW4's testimony and on his credibility in the trial. The prosecution did not explain these discrepancies or contradictions on the searches and discoveries of the drugs in the house. In view of the material inconsistencies, which were not explained, there were serious doubts raised on the searches, discoveries and seizures of the drugs by the police party in the house and whether the drugs belonged to the three accused.

[41] The three plastic packets containing drug (exhs P12 A–C) are the subject matters of the second charge in MYY–45D–3/10 of 2012 against the second and third accused persons only. The first accused was not charged as such. Since the prosecution had decided not to charge the first accused in respect of this charge under s 12(2) of the DDA, this established that he was not in possession, custody or control of the exhs P12A–C and that he probably did not know that there was drug in the room.

[42] The NOP also showed that PW4 then testified that he asked the accused persons whether there were any other drugs in the house. He said the third accused told him that there was a drug kept in a refrigerator in the kitchen of the house. He also recorded this in his police report (exh P31) as 'Seterusnya saya menyoalsiasat ketiga-tiga suspeck dan suspeck No (3) menyatakan ada menyimpan sedikit ganja di dalam peti ais di ruang dapur.' Learned counsel objected to this sentence in the police report because it amounted to a confession. Learned DPP agreed to delete this sentence from the report and as agreed the same was deleted.

[43] The DPP then applied for the report, as amended, to be admitted in evidence which was marked as exh P31. The counsel then did not object to the fact as stated in the amended police report that PW4 'saya kemudian periksa peti ais jenama 'Sharp'.'

[44] The counsels similarly applied that the testimony of PW4 that 'A female suspect told me that there is a drug kept in refrigerator in the kitchen of the house' be expunged from the NOP and the learned DPP again agreed that it be expunged and the same as agreed was expunged from the NOP.

[45] After the prosecution had deleted the above sentence in the police report and amended the police report (exh P31), this piece of evidence could not be used against the third accused and or against the other two accused.

[46] Similarly, after the prosecution had agreed to expunge the testimony of PW4 that 'A female suspect told me that there is a drug kept in refrigerator in the kitchen of the house.' from the NOP, this could not be used as evidence against the third accused and or against the other two accused. It also could not

be used as evidence against the third accused under s 27 of the Evidence Act 1950. Since the prosecution agreed to expunge the above, the inference is that the three accused probably did not know of the drugs in the refrigerator in the kitchen in the house.

[47] Moreover PW9, who investigated this case, had testified that the first and second accused were not tenants in the house and were only visitors to the house at the material time. There was no evidence adduced and no explanation given by any of the prosecution witnesses as to when or what time did the first and second accused had gone to the house, whether they went together or separately, whether it was shortly before the arrival of the police party at the house or how long had they been in the house. There was no evidence that they were there to consume or to buy any drug in the house.

[48] Based on the testimony of PW9 that the first and second accused were visitors to the house at that time and the fact that the prosecution had decided not to charge the first accused in respect of the exhs P12A–C, the inference was that they did not know and were not in possession, custody and or control of P12 A–C.

[49] For the reasons given above, the inference could also be drawn that they did not have custody and control of the drugs found in the refrigerator and in the cabinet in the kitchen in the house and that they did not know and were not conscious of the nature of the exhs or drugs found. There was no evidence that they had been to the kitchen or had opened or had access to the refrigerator and or the cabinet in the kitchen. The benefits of any doubts and the benefits of the contradictions in the testimony of PW4 on the discoveries and seizures of the drugs should be given to them. The conclusion was that they were not in possession of the drugs found in the house.

[50] The evidence showed that the third accused was staying in the house. The inference or suspicion was that she should know and was conscious of the nature of the things found in the room or in the refrigerator and or in the cabinet in the kitchen ie that they were dangerous drugs. PW1 had testified that he believed the two ladies who had inspected the house with the third accused would be staying in the house. However, he did not check and he was not sure whether the two ladies actually stayed in the house. Learned counsel had put to PW9 that one of the ladies had found the photograph (D3) in the house. The prosecution did not adduce any evidence whether the two ladies stayed in the house or otherwise. The prosecution did not exclude this possibility. PW9 also did not investigate this: see *Azizan bin Yahaya v Public Prosecutor* [2013] 1 MLJ 180; [2012] 8 CLJ 405.

[51] Although the third accused was staying in the house, as stated above, the

prosecution had applied to delete and expunge the testimony of PW4 that the third accused had told him that there was a drug kept in the refrigerator in the kitchen of the house. As stated above, the inference could be drawn that the third accused probably did not know of the drug in the refrigerator. Further, as stated above, there were material discrepancies in the testimony of PW4 which raised serious doubts on the discoveries and seizures of the drugs found in the house.

[52] Based on the facts and circumstances of the case, there was no evidence, direct or circumstantial, that there was any common intention between the three accused to be in possession or to be trafficking in dangerous drugs which were found and seized by PW4 in the house. There was no evidence of any plan or meeting of minds of all the three accused to commit the offences for which they were charged. There was no evidence that it was pre-arranged or that it was on the spur of the moment between them to be in possession or to be trafficking in dangerous drugs in the house: *Krishna Rao a/l Gurumuthi v Public Prosecutor and another appeal* [2009] 3 MLJ 643; [2009] 2 CLJ 603.

[53] The evidence also showed that there were inconsistences or contradictions in the identity, descriptions and weights of the drugs found and seized by PW4 in the house. I shall deal with these. In respect of the drug found in the room, PW4 labeled the three plastic packets as RBI to RB3. He weighed the three plastic packets and their contents and their gross weight was 2.99g. He put his signature and the date of the seizure on each of the plastic packets. They were tendered and marked as exhs PI2 A–C (see photograph exh P28 (I)).

[54] The evidence showed that after all the drugs were sent to the Chemistry Department at Bintulu for analysis, PW2 weighed all the drugs which she received from PW9. PW2 said that she weighed the three plastic packets including the contents and she said their gross weight was 2.9788g. PW2 weighed the crystalline substances from the three plastic packets, their nett weight was 2.20g. PW2 powdered and homogenised the crystalline substances for analysis. On analysis she found the powder to contain 1.70g of methamphetamine. PW2 put the remaining powder into a plastic packet provided by her which she labeled with '(BT) FOR 292/12-0'. This was tendered and marked as PI 2D. Methamphetamine is listed under Part III of the First Schedule of DDA as a dangerous drug.

[55] In respect of the drug found in the refrigerator, PW4 said that he made a search in the refrigerator in the kitchen in the presence of the third accused and he found a 'Lava' plastic container containing drug in the refrigerator (see photographs exh P28 (2) and (3)). Inside this container, there were nine bundles of compressed plant materials suspected to be ganja (see photographs exh P28 (4) and (5)). Each bundle was wrapped in transparent plastic sheets.

Five of these nine bundles were written with the figure '100' on each of them, he weighed them and their gross weight was 534.78g. The remaining four of these bundles were written with the figure '50' on each of them. He weighed them and their gross weight was 220.33g. The total gross weight of the nine bundles was 755.11g. PW4 labeled the 'Lava' container as RPA (exh PI4) and each of these nine bundles as RPA1 to RPA9 respectively (exh P14A1–9). He put his signature and the date of the seizure on each of these exhibits.

[56] PW2 weighed the nine bundles and gave their gross weight at 754.67gm. After removing foreign matters, the nett weight of the compressed plant materials was 690gm. PW2 put the foreign matters in a plastic packet supplied by her (exh P14C). After the analysis, PW2 put the remaining plant materials in another plastic packet supplied by her (exh P14B). PW2 found the plant materials to be cannabis and the weight of the cannabis was 687g. Cannabis is listed under Part I of the First Schedule of the DDA as a dangerous drug.

[57] PW4 also found a plastic container in the refrigerator containing 21 compressed lumps of dried leaves wrapped in transparent plastic sheets and which he suspected to be cannabis. PW4 labeled the container as RPB with his signature and date on it (see photographs exh P28 (16) and (17)). This was tendered and marked as exh PI5. PW4 similarly labeled the 21 lumps as RPB 1 to RPB 21 respectively and put his signature and date on each of these lumps which were tendered as exhs P15A1–21 (see photographs exh P28 (18) and (19)). He testified that the gross weight of the 21 lumps was 236.24gm.

[58] PW2 testified that she had weighed the 21 lumps marked as RPB 1 to RPB21 and their gross weight was 235.95g. She separated foreign matters from the plant materials. She put the foreign matters in a plastic packet supplied by her which was marked as exh P15C. She put the remaining plant materials in another packet supplied by her which was labeled as '(BT) FOR 292/12-0'. She testified that the nett weight of the compressed plant material was 205g. This packet was marked as exh P15B. PW2 testified that the plant materials contained cannabis and the weight of the cannabis was 204g.

[59] The drugs found in the cabinet in the kitchen are as follows:

(a) one *Pro-spec* shoe box containing four blocks of compressed plant materials, each block wrapped in transparent plastic sheets. PW4 labeled the box as RKA bearing his signature and the date (see photographs exh P28 (41) and (42)). The box was tendered as exh PI7. PW4 also labeled the four blocks of plant materials as RKA1 to RKA4 respectively and put his signature and the date on each of them (see photograph exh P28 (43)). PW4 weighed the four blocks of compressed plant materials together and the gross weight of the four blocks was 3,931.38g;

(b) PW2 weighed the four blocks of compressed plant material and their gross weight was 3931.39g. PW2 separated the foreign matters from the plant materials and she put the remaining plant materials after analysis in a plastic packet provided by her which she labeled with '(BT) FOR 292/12-0'. This was tendered as exh P17B. The foreign matters were put in another plastic packet supplied by her which was similarly labeled by PW2 and tendered as exh P17C. PW2 testified that the nett weight of the compressed material is 3,789g. On analysis she found the plant material to contain cannabis. The weight of the cannabis is 3,779g;

(c) one black HP computer bag labeled by PW4 as RKB bearing his signature and the date (see photograph exh P28 (44)). This bag was tendered as exh P18. Inside this bag the following were found:

(i) a plastic packet containing crystalline substance which PW4 labeled as RKB1 and with his signature and date on it. This was tendered as exh P18A. The gross weight of this packet was 50.10g. He suspected the substance to be *syabu*. PW2 testified that the gross weight of RKB1 was 50.1419g, the nett weight of its contents was 49.41g. On analysis, she found the crystalline substance to contain 40.63g of ketamine which is a dangerous drug under Part III of the First Schedule of the DDA;

(ii) a plastic packet containing 46 pills which PW4 described as 'pink' in colour and which PW2 described as 'peach' in colour. PW4 said that the tablets had a logo or marking which PW4 referred to as 'Rolex' logo and which PW2 described as 'crown' logo. PW4 labeled this packet as RKB2 and with his signature and date on it. He said the gross weight of this packet including the tablets was 13.26g. This packet was tendered as exh P18B. PW4 suspected the 46 tablets to be ecstasy pills. PW2 testified that the gross weight of RKB2 was 13.2525g, the nett weight was 12.50g. After PW2 grounded the tablets into powder form for analysis, the remaining powder was put into a packet provided by her which she labeled as '(BT) FOR 292/12-0'. This was tendered as exh P18C. She said the powder contained 5.85g of 3, 4-Methylenedioxymethamphetamine (MDMA) which is classified as a dangerous drug under Part III of the First Schedule of the DDA;

(iii) one 'Viper VTB-011' plastic container with five plastic packets inside the container. PW4 labeled the container as RKB3 with his signature and date. This container was tendered as exh PI9. The five plastic packets were labeled as RKB3A to RKB3E respectively. He put his signature and date on each of these packets:

(A) the plastic packet labeled as RKB3A contained five capsules which PW4 described as 'orange' in colour. PW4 said he

obtained the gross weight of RKB3A at 2.26g. PW2 described the five capsules as 'peach' in colour. PW2 weighed RKB3A and the gross weight was 2.2691g and the nett weight of the capsules was 1.64g. PW2 powdered the capsules for analysis. She found the powder to contain 0.56g of MDMA and 0.17g of ketamine. Both are classified as dangerous drugs under the First Schedule of DDA. The remaining powder was put inside another packet provided by PW2 which she labeled as '(BT) FOR 292/12-0'. This packet was tendered as exh P19B. The empty plastic packet RKB3A was tendered as exh P19A.

(B) The four plastic packets labeled as RKB3B, RKB3C, RKB3D and RKB3E respectively contained crystalline substance. The gross weight of these four packets including the crystalline substance was 4.18g. PW4 suspected the crystalline substance in these packets to be *syabu*. PW2 weighed the four plastic packets including the crystalline substance and their gross weight was 4.1820g, the nett weight of the crystalline substance was 3.36g. PW2 powdered the crystalline substance for analysis. She found the powder to contain 2.59g of methamphetamine which is classified as a dangerous drug under Part III of the First Schedule of DDA. The four empty plastic packets were tendered as exhs P19C1–4. The remaining powdered substance was put inside another packet provided by PW2 which she labeled as '(BT) FOR 292/12-0'. This packet was tendered as exh P19D;

(C) All these items were shown in the photographs marked as exhs P28 (45), (46) and (47).

(d) one light green plastic document bag which PW4 labeled as RKC and bearing his signature and the date. This bag was tendered as exh P20. Inside this plastic document bag, the following were found:

(i) one 'apple' plastic container with red lid which PW4 labeled as RKC1 and bearing his signature and the date. This container was tendered as exh P20B. There were three transparent packets inside this container, each packet containing eighteen (18) capsules ie a total of 54 capsules. PW4 described the colour of the capsules as light 'brown'. PW2 described the capsules as 'peach' in colour. The three packets were labeled by PW4 as RKC1A to RKC1C respectively and each bearing his signature and the date (see photographs exh P28 (50) and (51)). The gross weight of the three packets including the capsules was 19.08g. The three packets were tendered as exhs P20C1–3. PW2 weighed the three packets including the capsules and their gross weight was 19.0192g and the

nett weight of the capsules was 13.40g. PW2 powdered the contents of the capsules for analysis. She found the powder to contain 4.24g of MDMA and 1.66g of ketamine. The remaining powder was put into a separate packet provided by PW2 which she labeled as '(BT) FOR 292/12-0'. This was tendered as exh P20D;

(ii) one 'apple' plastic container with green lid which PW4 labeled as RKC2 and bearing his signature and the date. This container was tendered as exh P21. There were two transparent plastic packets inside this container. Each of the two packets contained powder which PW4 described as 'pink' in colour. PW4 labeled the two packets as RKC2A and RKC2B (see photographs exhs P28 (52) and (53)). PW4 weighed the two packets including the contents and their gross weight was 5.84g. The two packets were tendered as exhs P21A and P21B. PW2 testified that the two packets contained peach coloured powdery substance and portions of tablets and the gross weight of the two packets was 5.8252g and the nett weight of the contents was 4.77g. PW2 powdered the contents of the two packets into powder form for analysis. She found the powder to contain 2.19g of MDMA. PW2 put the remaining powder inside the packet which was labeled as RKC2A (exh P21A);

(iii) One bunch of compressed plant materials wrapped with transparent plastic sheets which was wrapped inside an aluminium foil (see photographs exhs P28 (54) and (55)). PW4 labeled the aluminium foil as RKC3 and bearing his signature and the date. The aluminium foil was tendered as exh P22. The plastic sheets were tendered as exh P22A. PW4 suspected the plant materials to be *ganja* and the gross weight of the aluminium foil, plastic sheets and plant materials was 112.95g. PW2 said that the gross weight of the compressed plant materials with the aluminium and plastic sheet wrappings was 105.3603g. She said the net weight of the plant materials was 96.88g. PW2 loosened the plant materials for analysis and found the plant materials to contain 96.88g cannabis. PW2 put the remaining plant materials inside a plastic packet provided by PW2 which she labeled as '(BT) FOR 292/12-0'. This packet containing the plant materials was tendered as exh P22B;

(iv) one plastic packet containing three strips of aluminium foil, each strip containing ten tablets. PW4 labeled the plastic packet as RKC4 and bearing his signature and the date. This plastic packet was tendered as exh P23. PW4 labeled each of the strips as RKC4A to RKC4C respectively and each bearing his signature and the date (see photographs exhs P28 (56) and (57)). The gross weight of the three strips including the packet and tablets was 12.72g. The three strips were tendered as exhs P23A–3. PW2 testified that the gross weight

of the three strips including the packet and tablets was 8.3060g. The nett weight of the tablets was 5.69g. PW2 powdered the 30 tablets for analysis. She found the powder to contain 0.18g of nimetazepam which is classified as a dangerous drug under Part III of the First Schedule of DDA. She put the remaining powder into a packet provided by her which she labeled as '(BT) FOR 292/12-0'. This was tendered as exh P23B;

(v) one black container with a word 'Jobon' printed in yellow on it. PW4 labeled the box as RKC5 and bearing his signature and the date. The box was tendered as exh P24. There were four plastic packets inside the box. PW4 labeled the four plastic packets as RKC5A to RKC5D respectively and each bearing his signature and the date (see photographs exhs P28 (58) and (59));

(A) the plastic packet labeled as RKC5A contained thirteen pills which PW4 described as 'green' in colour. The gross weight of this packet including the pills was 4.09g. PW2 described the tablets as 'blue' in colour and bearing 'Euro' logo. PW2 testified that the gross weight of RKC5A was 4.1075g and the nett weight of the tablets was 3.78g. PW2 grounded the tablets into powder for analysis. She found the powder to contain 1.50g of MDMA. She put the remaining powder back into the plastic packet labeled as RKC5A. This was tendered as exh P24A1;

(B) the plastic packet labeled as RKC5B contained five pills which PW4 and PW2 described as 'red' in colour. The gross weight of this packet was 1.79g. PW2 testified that the gross weight was 1.7971g and the nett weight of the pills was 1.48g. PW2 grounded the pills into powder for analysis. She found the powder to contain 0.05g of methamphetamine and 0.63g of ketamine. She put the remaining powder into the plastic packet labeled RKC5B. This was tendered as exh P24A2;

(C) the plastic packet labeled as RKC5C contained 20 pills which PW4 described as 'brown' in colour whereas PW2 described the colour as 'red'. The gross weight of this packet was 6.01g. PW2 did not give the gross weight of this packet including the contents. She said the nett weight of the 20 tablets was 5.79g. PW2 grounded the tablets into powder for analysis. She found the powder to contain 0.22g of methamphetamine and 2.68g of ketamine. She put the remaining powder into the plastic packet labeled as RKC5C. This was tendered as exh P24A3.

(D) the plastic packet labeled as RKC5D contained 20 pills which

PW4 and PW2 described as 'green' in colour. PW4 said the gross weight was 5.85g. PW2 testified that the gross weight was 5.8410g and the nett weight was 5.55g. PW2 grounded the tablets into powder for analysis. She found the powder to contain 2.54g of MDMA. She put the remaining powder into the plastic packet labeled as RKC5D. This was tendered as exh P24A4.

(vi) one plastic container with a 'Seahawk' logo on it. PW4 labeled the container as RKC6 and bearing his signature and the date. This box was tendered as exh P25. There were nine small lumps of plant materials wrapped in plastic sheets inside the container (see photographs exhs P28 (60) and (61)). PW4 labeled each of the nine lumps as RKC6–A to RKC6–I respectively and each bearing his signature and the date (see photograph exh P28 (62)). The gross weight of the nine lumps was 95.42g. PW2 testified that the gross weight of the nine small lumps of plant materials was 106.5821g. PW2 said the nett weight was 91.96g. After analysis PW2 found the nine small lumps of plant materials to contain cannabis. PW2 put the plant materials into a plastic packet which was tendered as P25B. The nine plastic sheets were tendered as exhs P25A1–9 respectively;

(vii) one plastic packet containing a black plastic container which contained a dark brown sticky substance. PW4 labeled the plastic packet as RKC7 and with his signature and the date on it. The plastic packet was tendered as exh P26 (see photograph exh P28 (63)). PW4 said that the substance inside the plastic container was suspected to be opium. The gross weight of the plastic packet and the container with the substance inside was 30.35g. PW2 testified that the gross weight of the plastic packet and the container with the substance inside was 94.5072g. PW2 said that the substance inside the container was prepared opium which is classified as a dangerous drug under Part II of the First Schedule of DDA. The weight of the prepared opium was 87.74g. The plastic container containing the prepared opium was tendered as exh P26A;

(viii) during the trial, PW2 testified that there was a sheet of blank 'A4' paper which she found inside the green plastic document bag (exh P20). PW4 did not list this sheet of paper being included in the green plastic document bag (see exh P36). No explanation was given where and how this piece of paper was inside the bag. This piece of paper was tendered and marked as exh P20A;

(e) one Wise Cottege Fries' container with a yellowish lid. PW4 labeled this container as RKD with his signature and the date on it (see photograph P28 (64)). This container was tendered as exh P27. Inside this container,

the following were found (see photograph exh P28 (65)):

(i) one 'Strepils' orange metal container. PW4 labeled this container as RKD1 and with his signature and the date on it. This container was tendered as exh P27A (see photograph exh P28 (66)). There were five plastic packets containing crystalline substance inside this container. PW4 labeled each of the five plastic packets as RKD1A to RKD1E and with his signature and the date on it respectively. The gross weight of the five plastic packets including the crystalline substance was 5.68g. PW4 suspected the substance to be syabu. PW2 said the gross weight of the five plastic packets with their contents was 5.6846g and the nett weight of the crystalline substance was 4.39g. PW2 powdered the crystalline substance for analysis and found the powder to contain 3.68g of ketamine. PW2 put the remaining powder inside the plastic packet labeled as RKD1E. The five plastic packets were tendered as exhs P27B1–5 respectively (see photographs exh P28 (67) and (68));

(ii) Fourty seven strips of aluminium foil each containing ten tablets. The 47 strips were tied with a rubber band. PW4 labeled each of the 47 strips of aluminium foil from RKD2(1) to RKD2(47) respectively with his signature and the date on each of the 47 strips. PW4 suspected the tablets to be 'erimin' drug. The gross weight of the 47 strips with the tablets inside was 131.6g. These 47 strips were tendered as exhs P27C(1)–(47) (see photographs exhs P28 (69), (70), (71), (72), (73), (74) and (75)). PW2 testified that the gross weight of the 47 strips including the tablets was 132.9586g. PW2 said that she separated the 47 strips because they contained peach and green colour tablets. She said the tablets in 21 of the strips were peach in colour which she powdered for analysis. The nett weight of the powder was 38.98g which she found to contain 1.24g of Nimetazepam. She put the remaining powder inside a plastic packets provided by her which she labeled as '(BT) FOR 292/12-0 RKD2(1)–(47) Peach tablets'. This plastic packet was tendered as exh P27D. PW2 also testified that the tablets in 26 of the strips were green in colour which she powdered for analysis. The nett weight of the powder was 47.83g which she found to contain 0.78g of Nimetazepam. She put the remaining powder inside a plastic packet provided by her which she labeled as '(BT) FOR 292/12-0 RKD2(1)–(47) Green tablets'. This plastic packet was tendered as exh P27E;

(iii) one plastic packet containing fifty one pink pills with 'Playboy' logo on the pills. PW4 labeled the plastic packet as RKD3 and with his signature and the date on it. PW4 said that the gross weight of the packet with the pills inside was 15.35g. PW2 described the 51

tablets as red in colour and said that the gross weight of the plastic packet with the tablets inside was 15.3978g. The nett weight of the tablets was 14.92g. PW2 powdered the pills or tablets for analysis. She found the powder to contain 0.63g of methamphetamine and 6.99g of ketamine. She put the remaining powder inside the plastic packet RKD3. This plastic packet was tendered as exh P27F (see photograph exh P28 (65));

(iv) one plastic packet containing fifty seven pills which PW4 described as 'yellow' in colour with a 'Channel' logo on the pills. PW4 labeled the plastic packet as RKD4 and with his signature and the date on it. PW4 said that the gross weight of the packet with the pills inside was 16.33g. PW2 said that the gross weight of the plastic packet with the tablets inside was 16.3442g. PW2 powdered the pills or tablets for analysis. The nett weight of the powder was 15.74g which she found to contain 6.94g of MDMA. She put the remaining powder inside the plastic packet RKD4. This plastic packet was tendered as exh P27G (see photograph exh P28 (65));

(v) one plastic packet containing fourteen blue pills with 'Rolex' logo on the pills. PW4 labeled the plastic packet as RKD5 and with his signature and the date on it. PW4 said that the gross weight of the packet with the pills inside was 4.47g. PW4 suspected the pills to be ecstasy tablets. PW2 said that the gross weight of this plastic packet including the tablets was 4.4818g and the nett weight was 3.89g. PW2 powdered the pills or tablets for analysis. She found the powder to contain 1.70g of MDMA. She put the remaining powder inside the plastic packet RKD5. This plastic packet was tendered as exh P27H (see photograph exh P28 (65)); and

(vi) one plastic packet containing fourteen green pills with 'Butterfly' logo on the pills. PW4 labeled the plastic packet as RKD6 and with his signature and the date on it. PW4 said that the gross weight of the packet with the pills inside was 4.55g. PW4 suspected the pills to be ecstasy tablets. PW2 said that the gross weight of the plastic packet including the tablets was 4.5795g and the nett weight was 4.08g. PW2 powdered the pills or tablets for analysis. She found the powder to contain 1.62g of MDMA. She put the remaining powder inside the plastic packet RKD6. This plastic packet was tendered as exh P27I (see photograph exh P28 (65)).

[60] I shall now deal with the drugs and their weights referred to in each of the eight charges in this trial against the three accused.

[61] In the first charge in Criminal Case No MYY–45D–1/10 of 2012, the three accused persons were charged to be jointly in possession of 3967.84g of

cannabis under s 39B(1)(a) of the DDA. The aggregate weight of 3,967.84g of cannabis comprised of:

(a) 3,779g of cannabis tendered and marked as exh P17B (see paras 59.1.1 and 59.1.2 of judgment);

(b) 96.88g of cannabis tendered and marked as exh P22B (see para 59.3.3 of judgment); and

(c) 91.96g of cannabis tendered and marked as exh P25B (see para 59.3.6 of judgment).

[62] In the second charge in Criminal Case No MYY–45D–1/10 of 2012, the three accused persons were charged to be jointly in possession of 27.14g of MDMA under s 12(2) of the DDA. The aggregate weight of 27.14g of MDMA comprised of:

(a) 5.851g of MDMA tendered and marked as exh P18C (see para 59.2.2 of judgment);

(b) 0.56g of MDMA tendered and marked as exh P19B (see para 59.2.3(a) of judgment);

(c) 4.24g of MDMA tendered and marked as exh P20D (see para 59.3.1 of judgment);

(d) 2.19g of MDMA tendered and marked as exh P21A (see para 59.3.2 of judgment);

(e) 1.50g of MDMA tendered and marked as exh P24A1 (see para 59.3.5(a) of judgment);

(f) 2.54g of MDMA tendered and marked as exh P24A4 (see para 59.3.5(d) of judgment);

(g) 6.94g of MDMA tendered and marked as exh P27G (see para 59.4.4 of judgment);

(h) 1.70g of MDMA tendered and marked as exh P27H (see para 59.4.5 of judgment); and

(i) 1.62g of MDMA tendered and marked as exh P27I (see para 59.4.6 of judgment);

[63] In the third charge in Criminal Case No MYY–45D–1/10 of 2012, the three accused persons were charged to be jointly in possession of 3.49g methamphetamine under s 12(2) of the DDA. The aggregate weight of 3.49g of methamphetamine comprised of:

(a) 2.59g of methamphetamine tendered and marked as exh P19D (see para 59.2.3(b) of judgment);

(b) 0.05g of methamphetamine tendered and marked as exh P24A2 (see para 59.3.5(b) of judgment);

(c) 0.22g of methamphetamine tendered and marked as exh P24A3 (see para 59.3.5(b) of judgment);

(d) 0.63g of methamphetamine tendered and marked as exh P27D (see para 59.4.3 of judgment);

[64] In the first charge in Criminal Case No MYY–45D–2/10 of 2012, the three accused persons were charged to be jointly in possession of 87.74g of prepared opium under s 9(1)(b) of the DDA. The 87.74g of prepared opium was tendered and marked as exh P26A (see para 59.3.7 of judgment).

[65] In the second charge in Criminal Case No MYY–45D–2/10 of 2012, the three accused persons were charged to be jointly in possession of 2.20g of Nimetazepam under s 12(2) of the DDA. The aggregate weight of 2.20g of nimetazepam comprised of:

(a) 0.18g of nimetazepam tendered and marked as exh P23B (see para 59.3.4 of judgment);

(b) 1.24g of nimetazepam tendered and marked as exh P27D (see para 59.4.2 of judgment); and

(c) 0.78g of nimetazepam tendered and marked as exh P27E (see para 59.4.2 of judgment);

[66] In the third charge in Criminal Case No MYY–45D–2/10 of 2012, the three accused persons were charged to be jointly in possession of 56.44g of ketamine under s 12(2) of the DDA. The aggregate weight of 56.44g of ketamine comprised of:

(a) 40.63g of ketamine tendered and marked as exh P18A (see para 59.2.1 of judgment);

(b) 0.17g of ketamine tendered and marked as exh P19A (see para 59.2.3(a) of judgment);

(c) 1.66g of ketamine tendered and marked as exh P20D (see para 59.3.1 of judgment);

(d) 0.63g of ketamine tendered and marked as exh P24A2 (see para 59.3.5(b) of judgment);

(e) 2.68g of ketamine tendered and marked as exh P24A3 (see para 59.3.5(c) of judgment);

(f) 3.65g of ketamine tendered and marked as exh P27B1-5 (see para 59.4.1 of judgment);

(g) 6.99g of ketamine tendered and marked as exh P27F (see para 59.4.3 of judgment);

[67] In the first charge in Criminal Case No MYY–45D–3/10 of 2012, the three accused persons were charged to be jointly in possession of 891g of cannabis under s 39B(1)(a) of the DDA. The aggregate weight of 891g of cannabis comprised of:

a) 687g of cannabis tendered and marked as exh P14B (see paras 55 and 56 of judgment);

b) 204g of cannabis tendered and marked as exh P15B (see paras 57 and 58 of judgment);

[68] In the second charge in Criminal Case No MYY–45D–3/10 of 2012, the second and third accused persons were charged to be jointly in possession of 1.70g of methamphetamine under s 12(2) of the DDA. The aggregate weight of 1.70g of methamphetamine was tendered and marked as exh P12A–C (see para 54 of judgment).

[69] PW2 had testified on the analysis of the drugs carried out by her. She was the best person to determine the adequate quantity that should be taken as samples for the purpose of carrying out the tests. There is no provision in the DDA which requires at least 10% of the total weights of the drugs concerned to be taken for the analysis: *Gunalan a/l Ramachandran & Ors v Public Prosecutor* [2004] 4 MLJ 489; [2004] 4 CLJ 551. At the end of the prosecution case, there was no evidence or other chemist report or expert witness report which disputed her findings or raised any serious doubts on her analysis and or findings on the drugs. Unless there was evidence which was so inherently incredible that no person could believe it to be true, her analysis and findings should be accepted as prima facie evidence: *Public Prosecutor v Lam San* [1991] 3 MLJ 426; [1991] 3 CLJ 2410. Her findings including on the weights of the drugs formed the basis of these eight charges against the three accused.

[70] Although PW4 labeled the containers and plastic packets, which contained the drugs, which he seized, the question is whether the drugs found in the containers and or in the plastic packets were or are the same drugs which were sent by PW9 to the Chemistry Department, Bintulu and analysed by PW2 and which were produced in court.

[71] PW9 did not identify or describe the drugs which were handed to him and which he said he sent to the Chemistry Department in Bintulu which were received by PW2. He did not, individually or separately, weigh or label the drugs. He relied on the labeling by PW4 and the weight of the drugs weighed by PW4. PW9 did not in his testimony, individually or separately, identify or

describe the drugs which were produced in court. PW9 merely looked at the exhibits in court, looked at the labels prepared by PW4 and confirmed that they were the exhibits handed to him.

[72] Obviously PW9 was not in a position to identify the drugs because PW2 had grounded the crystalline substances and tablets into powder for analysis. They were in a different form when produced in court. PW2 had also separated the plant materials before analysis. PW2 had put some of these exhibits in plastic packets provided by her and labeled by her. Some of these exhibits, produced in court, were in packets which were not labeled by PW4. Therefore PW9 could not have identified these exhibits based on the labels by PW4.

[73] From the identity, colours, descriptions and weights of the drugs set out above, there were obvious discrepancies or inconsistences in the testimony of PW4 and PW2 in respect of the drugs referred to during the trial. For example, the plastic packet labeled as RKB2 which was tendered as exh P18B. PW4 testified that the packet contained 46 pink pills which bore a 'Rolex' logo. However PW2 testified that the packet contained 46 peach tablets which bore a 'Crown' logo. PW4 testified that the gross weight was 13.26g whereas PW2 testified that the gross weight was 13.2525g. This was just one example of the discrepancies in respect of the drugs.

[74] Another example, PW4 testified that the gross weight of the plastic packet and the container containing the prepared opium was 30.35g whereas PW2 testified that their gross weight was 94.5072g. There was a discrepancy in the weight. PW9 did not explain why exh P26, which was weighed at 30.35g by PW4, handed over to him and which he later handed to PW2, had become 94.5072g. There was an increase in the weight. There were many examples listed above in respect of the discrepancies between PW4 and PW2 in respect of the weights and descriptions of the drugs.

[75] In respect of exh P18B, PW4 and PW2 did not explain why the 46 pills or tablets were 'pink' or 'peach' in colour, why the logo was called or described as 'Rolex' or 'Crown' and whether they were the same pills or tablets. PW4 did not explain why he obtained the gross weight at 13.26g and not 13.2525g which was obtained by PW2. PW2 did not explain why there was a difference in the gross weight of the exhibits sent to her.

[76] Another example. PW4 testified that the two packets (exhs P21A and P21B) contained pink powder and their gross weight was 5.84g. PW2 testified that the two packets contained peach coloured powdery substance and

portions of tablets and their gross weight was 5.8252gm. The prosecution did not ask PW2, PW4 and PW9 to explain these discrepancies and whether they were the same drugs.

[77] In respect of all the drugs seized, analysed and produced in court, PW4 and PW2 had given different gross weights in respect of each of the drugs seized and produced in court. As stated above, PW4 and PW2 did not explain these discrepancies or different weights which they obtained. They did not explain whether the differences in the weights were because they used different weighing scales or the same or similar scales or whether the scales were not calibrated or not accurate. PW9 sent the drugs to the Chemistry Department, Bintulu on 27 February 2012, four days after they were seized and weighed by PW4. There was no evidence that there was any shrinkage or change to the drugs within these short few days. The prosecution did not attempt to explain any of these discrepancies. The facts and circumstances in this case can be distinguishable from those in *Hasbala Mohd Sarong v Public Prosecutor* [2013] 6 MLJ 636; [2013] 6 CLJ 945.

[78] Since there were numerous discrepancies in the colours, descriptions and gross weights of the drugs seized and produced in court, the inference is that the drugs which were seized by PW4 and sent by PW9 to PW2 for analysis and produced in court were different drugs. The inference can also be drawn that the drugs seized by PW4 and sent by PW9 to PW2 had been tampered with because they were different drugs ie they were different drugs due to the different colours, different descriptions and different weights of some of these drugs. There are serious doubts raised as to the identity, colours, descriptions and weights of the drugs which were seized by PW4 and produced in court subsequently. The prosecution did not and failed to explain these doubts and the benefits of the doubts should be given to the three accused. On the evidence adduced, the prosecution has failed to establish the identity, descriptions and weights of the drugs in this trial: *Yeong Kia Heng lwn Pendakwa Raya* [1992] 1 MLJ 327, *Tan Yew Choy v Public Prosecutor* [2010] 5 MLJ 212, *Zaifull bin Muhammad v Public Prosecutor and another appeal* [2013] 2 MLJ 348.

[79] Further, there was no direct or circumstantial evidence that the three accused persons were trafficking in dangerous drugs. They were merely found in the room in the house when the police arrived. The prosecution is relying on the presumption under s 37(da) of the DDA. For the reasons given that there were material discrepancies in the prosecution case, the court has found that they were not in possession of the drugs found in the house and the presumption under s 37(da) does not apply.

[80] The test at the end of the prosecution case is 'prima facie case' based on a maximum evaluation of evidence. If the evaluation of the evidence results in

doubts in the prosecution case, then a prima facie case has not been made out. The defence ought not to be called merely to clear or clarify such doubts: *Magendran a/l Mohan v Public Prosecutor* [2011] 6 MLJ 1; [2011] 1 CLJ 805.

[81] I have made a maximum evaluation of the evidence adduced by the prosecution. I find that there were material discrepancies on the evidence adduced on the searches, discoveries and seizures of the drugs found in the house. There were also material discrepancies on the identity, colours, descriptions and weights of the drugs which were seized from the house and produced in court. These material discrepancies have raised serious doubts on the prosecution's case which were not explained by the prosecution.

[82] For the reasons given, the prosecution has failed to make out a prima facie case against the three accused persons. The three accused are hereby acquitted and discharged.

Accused persons acquitted and discharged.

Reported by Afiq Mohamad Noor